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NSC FOR CBARTON  
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TAGS: PGOV PHUM VE

SUBJECT: SUMATE LEADERS TO BE TRIED; NO INCARCERATION  
ORDERED

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASONS 1.4 (d)  
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SUMMARY  
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¶1. (C) A Caracas court ruled July 7 that Sumate's leaders - Maria Corina Machado, Alejandro Plaz, Luis Enrique Palacios and Ricardo Estevez - would stand trial for conspiracy for accepting National Endowment for Democracy (NED) funds. The court did not/not order detention measures for Sumate's leadership pending trial, despite the prosecution's insistence that they posed a flight risk. If convicted, Sumate's leadership could face prison terms of up to sixteen years. In the press conference following the judge's ruling, Machado encouraged Sumate volunteers to press forward on the second phase of the NGO's campaign to challenge irregularities in Venezuela's electoral registry. A trial date has not yet been set. End summary.

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Sumate Leaders To Be Tried for Conspiracy  
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¶2. (U) After numerous court delays and much speculation, a Caracas court ruled July 7 that Sumate's leadership - Maria Corina Machado, Alejandro Plaz, Luis Enrique Palacios and Ricardo Estevez - would stand trial for conspiracy under Article 132 of the Venezuelan penal code. Article 132 reads in part that "(Venezuelans) who conspire to destroy the republican political system that governs the nation will be punished with eight to sixteen years in prison...(Venezuelans) who ask for foreign intervention in domestic political affairs...are subject to the same punishment." Machado and Plaz are charged with conspiracy, while Palacios and Estevez face the lesser charge of complicity in the crime of conspiracy, allegedly committed with NED funds.

¶3. (U) The court ruled that Sumate's leadership should not be incarcerated during the trial. In November 2004, the Penal Chamber of Venezuela's Supreme Court ruled that no detention measures be ordered against the group because they were neither dangerous nor a flight risk. The prosecution had requested that Machado and Plaz be incarcerated pending trial and that secondary detainment measures which included an order not to leave the country be issued against Estevez and Palacios. The defense challenged the prosecution's continued insistence on incarceration, stating that "Supreme Court decisions are not open to appeal and are obligatory."

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Sumate Reacts  
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¶4. (U) At the press conference following the ruling, Machado and Plaz voiced disappointment with the court's decision. Sumate's defense lawyer Juan Martin Echeverria told reporters that the court had admitted all of the prosecution's evidence, while admitting only part of the defense's. Echeverria pointed out that in admitting only part of the defense's arguments, the court had directly contravened a November 2004 Venezuelan Supreme Court order. Under that order, Sumate is also to have the opportunity to obtain testimony from members of the National Endowment for Democracy board, which as Sumate's lawyers note, they still plan to do.

¶5. (U) Machado used the press conference to encourage Sumate volunteers in the fight for clean elections. She asserted that the proceedings against Sumate formed part of a strategy of persecution designed to limit the organization's participation in civic life, stating that "They want to intimidate us in order to paralyze our campaigns of citizen education, mobilization and participation." She urged Sumate volunteers to press forward on the second phase of the NGO's campaign to challenge irregularities in Venezuela's electoral

registry.

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Limited Observer Presence Expected to Expand  
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16. (C) American Bar Association (ABA) InternatiQHuman Rights Trial Observer Project representative Doug Cassel told the Ambassador July 7 that observer presence at the hearing July 6 was limited to the ABA. PolCounts confirmed that the Europeans had not sent observers. Cassel said the ABA's preliminary report on the proceedings against Sumate would be presented to ABA's board in August. The criteria the ABA will use to judge the legality of the proceedings against Sumate include: whether Article 132 of the Venezuelan penal code meets international standards of clarity and precision, whether there are procedural issues such as the non-random appointment of judges to the case that impede a fair trial, and the broader context of the politicization of Venezuela's judiciary. Cassel added that he would most likely recommend that the ABA publish the report which would generate further international support for Sumate.

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COMMENT  
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17. (C) The court's decision to proceed with Sumate's trial was not unexpected. The next step is for the court system to select a trial venue. Although according to procedures this is to be accomplished at random, as in practically all of the politically motivated cases currently coursing through Venezuela's judiciary, the judge and court are likely to be among the handful identified with the government. The process itself is unlikely to be speedy. It benefits Chavez to have the matter hanging over the Sumate leaders. The unresolved prosecution with possible jail time is a convenient electoral issue, intimidates Sumate members, and serves as a warning to all politically active NGO's in Venezuela. Embassy Caracas will follow the case closely. We would also urge the Department to continue communication with NED officials regarding the Sumate's defense in obtaining testimony for the trial.

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